



INTERIOR BOARD OF INDIAN APPEALS

Estate of Joyce Mary James

4 IBIA 81 (06/20/1975)



United States Department of the Interior

OFFICE OF HEARINGS AND APPEALS
INTERIOR BOARD OF INDIAN APPEALS
4015 WILSON BOULEVARD
ARLINGTON, VA 22203

ESTATE OF JOYCE MARY JAMES

IBIA 75-70

Decided June 20, 1975

Appeal from an order denying petition for rehearing.

Docketed, Affirmed and Dismissed.

1. Indian Probate: Generally

The Department of the Interior does not have the authority to declare a statute unconstitutional as being in violation of the Constitution of the United States.

APPEARANCES: Gail G. Mauer of the Seattle Indian Center Legal Services, for appellants, Mr. and Mrs. Harold Johnston, guardians ad litem for Luana James Johnston, and Timothy Joseph Johnston, minors.

OPINION BY ADMINISTRATIVE JUDGE WILSON

This matter comes before the Board on appeal from a decision of April 4, 1975, issued by Administrative Law Judge Robert C. Snashall, denying appellants' petition for rehearing. The appeal accordingly is docketed under the above-cited number.

The appellants in support of their petition for rehearing gave the following reasons:

1. That R. C. W. 11.04.085 should not be applied to exclude the above named minor children from inheriting their share of decedent's estate.
2. That the assimilation of Washington State Law into Federal Law for the purpose of determining "Heirs" is an unconstitutional delegation of Legislative power in violation of Article 1, § 8 of the United States Constitution.

3. That the application of Washington Law to determine "Heirs" results in denial of equal protection of the Laws in violation of the Fifth Amendment of the United States Constitution.

The Judge in his order of April 4, 1975, denied the petition on the grounds that he was without jurisdiction to consider the constitutional validity of Federal legislation. It is from the foregoing denial that the appeal is before this forum.

The appellants' bases for the appeal are identical to those given in connection with the petition for rehearing. Accordingly, the reasons are not repeated. Moreover, for the reasons hereinafter set forth there appears to be no necessity for allowing briefing or pleading time pursuant to 43 CFR 4.294 and 4.295.

The appeal, like the petition for rehearing, raises a constitutional challenge to the application of R. C. W. 11.04.085 and assimilation thereof into Federal law for determining heirs.

[1] This Board, like the Administrative Law Judge, is without authority to declare a statute unconstitutional as being in violation of the Constitution of the United States. Only the Courts have the authority to take action which runs counter to the will of the Legislature. 3 Davis, Administrative Law Treatise, § 20.04; Public Utilities Commission of California v. United States, 255 U.S. 534, 539 (1958).

It is the policy of the Department of the Interior to expedite the exhaustion of petitioners' administrative remedy whenever the petitioner, in good faith, raises the issue as to the constitutionality of an act the Department is charged with following so that he may pursue the proper relief in the courts. Estate of Benjamin Harrison Stowhy, 1 IBIA 269, 79 I.D. 428 (1972); Estate of Florence Bluesky Vessell, 1 IBIA 312, 79 I.D. 615 (1972) and Estate of Jonah Crosby, 2 IBIA 289, 81 I.D. 279.

The fact that no grounds other than the constitutional issue are given in support of this appeal, the Administrative Law Judge's order of April 4, 1975, must be affirmed and this appeal dismissed for the reasons hereinabove set forth.

NOW, THEREFORE, by virtue of the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, the appeal of Mr. and Mrs. Harold Johnston as guardians ad litem for Luana

James Johnston and Timothy Joseph Johnston, minors, is hereby DISMISSED, and this decision shall be executed and distribution made thereof by the Administrative Law Judge in accordance with the provisions of 43 CFR 4.296.

This Decision is final for the Department.

//original signed
Alexander H. Wilson
Administrative Judge
Board of Indian Appeals

I concur:

//original signed
Mitchell J. Sabagh
Administrative Judge
Board of Indian Appeals